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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91211879
Party	Plaintiff Tarisio Auctions LLC
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Submission	Motion for Summary Judgment
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X		
TARISIO AUCTIONS LLC,)	
)	Opposition No. 91211879
Opposer,)	
)	Application Serial No. 85756067
v.)	
)	
CONTE COZIO AUCTIONS)	
LLC DBA CONTE COZIO,)	
)	
Applicant.)	
-----X		

OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Opposer Tarisio Auctions LLC, hereby moves under Rule 56 of the Federal Rules of Civil Procedure ("Fed. R. Civ. Pro.") for an order granting summary judgment against the Applicant, refusing registration of trademark application Serial No. 85756067 for CONTE COZIO FINE INSTRUMENTS AND BOWS (the "CONTE COZIO Mark") and sustaining the Opposer's Notice of Opposition. The Applicant claims that its pending CONTE COZIO Mark does not so resemble the Opposer's pleaded COZIO Mark as to be likely to cause confusion, mistake or deception. However, as set forth in more detail below, it is clear that the Applicant's CONTE COZIO Mark and the Opposer's COZIO Mark are similar and are used in connection with identical or nearly identical services so that confusion is likely. In the alternative, the Opposer should be granted summary judgment on its dilution cause. Accordingly, judgment should be granted in favor of Opposer.

FACTS

The facts are set forth in the attached declaration of Jason Price, sworn to on August 4, 2014 (the "Price Dec.") and the affidavit of Peter J. Vranum, Esq., sworn to on August 6, 2014 (the "Vranum Aff."), each of which are submitted herewith.

Opposer commenced this action by serving and filing its notice of opposition dated August 5, 2013 (the "Notice of Opposition"). The Applicant filed an answer generally denying the allegations in the Notice of Opposition and asserting several affirmative defenses. On November 12, 2013 Opposer served its initial disclosures pursuant to Fed. R. Civ. P. 26(a). Applicant did not and has not to date served its required initial disclosures. On January 24, 2014 Opposer served Opposer's First Request for Admissions, Nos. 1-29 (the "Requests for Admissions"). Vranum Aff., Exhibit A. Responses were due 30 days after service. Applicant failed to timely respond to the Requests for Admission and to date has not responded. On March 31, 2014 Opposer served Opposer's First Set of Interrogatories (the "Interrogatories") and Opposer's First Set of Requests for Production of Documents and Things Directed to Applicant (the "Requests for Production"). Copies of the Interrogatories and Requests for Production are attached to the Vranum Aff. as Exhibits B and C, respectively. Applicant's responses to the Interrogatories and Requests for Production were due by 30 days after service. On May 24, 2014 and June 9, 2014, Opposer wrote to Applicant regarding responses to the outstanding discovery demands. Opposer also discussed the issue with Applicant by telephone on at least two occasions. Applicant has repeatedly stated the responses were forthcoming but gave no date when they would be served. To date no responses have been received.

ARGUMENT

I. Applicant's Admissions Are Sufficient to Award Summary Judgment in Favor of Opposer

TBMP 411.03 provides that: "If a party on which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted ..." In this case the Applicant did not respond to Opposer's Requests for Admissions. Accordingly, such facts are deemed admitted. (Vranum Aff., Par. 6) As such, Applicant has admitted, inter alia, the following:

"...Applicant markets its services under the Applicant's Mark to the same consumers to which Opposer markets its services under Opposer's Mark." (Request No. 14)

"...Applicant's Mark was not used in trade or commerce in the United States prior to 2012." (Request No. 16)

"...Applicant's Mark is designed to connote and build upon the history, goodwill, and business reputation of Opposer." (Request No. 17)

"...the dominant feature of Applicant's Mark is the term 'COZIO.'" (Request No. 18)

"...the dominant feature of Opposer's Mark is the term 'COZIO.'" (Request No. 19)

"...Opposer's COZIO [Mark] is famous and holds significant value and goodwill in the United States." (Request No. 22)

"...Opposer has been using the COZIO mark in commerce to provide on-line services featuring musical instruments since at least as early as 2003." (Request No. 23)

"...there is a likelihood of confusion between Applicant's Mark and Opposer's Mark." (Request No. 27)

"...Opposer used Opposer's Mark in commerce long before Applicant commenced use in

commerce of Applicant's Mark." (Request No. 28)

(Vranum Aff., Par. 6)

II. Opposer Has a Superior Right to Use the Mark COZIO and Variations Thereof Based Upon Prior Use

Opposer began using its COZIO Mark in commerce since at least April 30, 2003.

(Price Dec., Par. 3). Opposer is the owner of a trademark registration for COZIO. (Price Dec., Par. 5; Exhibit A). Applicant did not apply to register its CONTE COZIO Mark until October 17, 2012 and alleges a date of first use in commerce of August 25, 2012. The Opposer's first use of its mark in commerce precedes the Applicant's date of first use of its mark by more than 9 years. It is clear that Opposer has trademark rights to its mark, prior and superior to the trademark rights of Applicant in its mark. Furthermore, Applicant has admitted that Opposer has used its mark in commerce long before Applicant commenced use of its mark and that Applicant's Mark was not in use in commerce in the United States prior to 2012. (Vranum Aff., Par. 6).

III. There Is A Likelihood of Confusion Between Opposer's Mark and the Applicant's Mark

Section 2(d) of the Lanham Act prohibits registration of a mark when that mark:

...consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant to cause confusion, or to cause mistake or to deceive.

15 U.S.C. §1052(d).

Summary judgment may be granted when the moving party has established that there

are no genuine issues as to any material facts necessary to its claims. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, 477 U.S. 242 (1985). Confusion between the Opposer's mark and the Applicant's mark is likely because the Applicant's mark is similar in appearance and commercial impression to the Opposer's COZIO Mark.

It has been held that in a likelihood of confusion analysis, "the similarity or dissimilarity of the marks themselves, may be dispositive of the issue." Champagne Louis Roederer, S.A. v. Delicato Vineyards, 148 F.3d 1373, 47 USPQ2d 14595 (Fed. Cir. 1998). The case law interprets the term "likelihood of confusion" broadly. Indeed, courts have held that, "[a]lthough confusion, mistake or deception about source or origin is the usual issue posed under Section 2(d), any confusion made likely by a junior user's mark is cause for refusal: likelihood of confusion encompasses confusion of sponsorship, affiliation or connection." Hilson Research, Inc. v. Society for Human Resource Management, 27 U.S.P.Q.2d 1423 (T.T.A.B. 1993).

In the Du Pont decision, the Court of Customs and Patent Appeals set forth thirteen factors to be considered in determining whether a likelihood of confusion exists under Section 2(d). In re E.I. Du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 U.S.P.Q. 563 (C.C.P.A. 1973). It is not necessary that each element be extant. However, when such elements are relevant they must be considered. Id. at page 1362. Furthermore, similarity in any one of these elements may be sufficient to find a likelihood of confusion. In re White Swan Ltd., 8 USPQ2d 1534, 1535 (TTAB 1988); In re Lamson Oil Co., 6 USPQ2d 1041, 1043 (TTAB 199); TMEP §§1207.01(b). In this case, it is obvious that the marks, CONTE COZIO and COZIO, share the common term COZIO. Indeed, the COZIO portion of the Applicant's Mark is the dominant feature of the mark or at a minimum a dominant feature of the Applicant's Mark.

Because of its stylization, attention is drawn to the CONTE COZIO component of Applicant's mark and as such the inclusion of COZIO is instrumental in creating the overall commercial impression. The common elements shared by the two marks, COZIO are significant in creating the commercial impression of each of the marks. One feature of a mark may be more significant in creating a commercial impression. In re Dixie Restaurants, Inc., 105 F.3d 1045, 41 U.S.P.Q.2d 1531 (Fed. Cir. 1997); In re National Date Corporation, 753 F.2d 1056, 224 U.S.P.Q. 749 (Fed. Cir. 1985). A consumer would remember the unusual and distinctive COZIO term from each mark and would likely be confused as to the source of the services sold under the marks. Where, as here, "the dominant portion of both marks is the same then confusion may be likely notwithstanding peripheral differences." TMEP Section 1207(b)(iii). The TMEP cites many instances where two marks which were not identical were found to be confusingly similar because the overall commercial impressions were close enough that confusion was likely. For example: In re Computer Systems Center Inc., 5 U.S.P.Q.2d 1378 (T.T.A.B. 1987)(CSC ADVANCED BUSINESS SYSTEMS for retail computer stores held likely to be confused with CSC for computer time sharing and computer programming services); In re The U.S. Shoe Corp., 229 U.S.P.Q. 707 (T.T.A.B. 1985) (CAREER IMAGE (stylized) for clothing held likely to be confused with CREST CAREER IMAGES (stylized) for uniforms); In re Corning Glass Works, 229 U.S.P.Q. 65 (T.T.A.B. 1985)(CONFIRM for a buffered solution equilibrated to yield predetermined dissolved gas values in a blood gas analyzer held likely to be confused with CONFIRMCELLS for diagnostic blood reagents for laboratory use); In re Denisi, 225 U.S.P.Q. 624 (T.T.A.B. 1985)(PERRY'S PIZZA held likely to be confused with PERRY'S, both for restaurant services); In re Chatam International Inc., 380 F.3d 1340, 1343, 71 U.S.P.Q.2d 1944, 1946 (Fed. Cir.2004)("Viewed in their entireties

with non-dominant features appropriately discounted, the marks [GASPAR'S ALE for beer and ale and JOSE GASPER GOLD for tequila] become nearly identical.”); Hewlett-Packard Co. V. Packard Press Inc., 281 F.3d1261, 62 U.S.P.Q.2d 1001 (Fed. Cir. 2002)(even though applicant's mark PACKARD TECHNOLOGIES... does not incorporate every feature of opposer's HEWLETT PACKARD MARKS, similar overall commercial impression is created).

In this case the Applicant has adopted the Opposer's COZIO Mark in its entirety and merely added some descriptive terms which do not serve to distinguish its mark. The case law is clear that the mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d). See, In re Chatam Int'l Inc., 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004)(GASPAR'S ALE and JOSE GASPAR GOLD); Coca-Cola Bottling Co. v. Jos E. Seagram & Sons, Inc., 526 F. 2d 556, 188 USPQ 105 (C.C.P.A. 1975)(BENGAL and BENGAL LANCER); Lilly Pulitzer, Inc. v. Lilli Ann Corp., 376 F.2d 324, 153 USPQ 406 (C.C.P.A. 1967)(THE LILLY and LILLI ANN); In re Toshiba Med. Sys. Corp., 91 USPQ2d 1266 (TTAB 2009)(TITAN and VANTAGE TITAN); In re El Torito Rests., Inc., 9 USPQ2d 2002 (TTAB 1988)(MACHO and MACHO COMBOS); In re Corning Glass Works, 229 USPQ 65 (TTAB 1985)(CONFIRM and CONFIRMCELLS); In re U.S. Shoe Corp., 229 USPQ 707 (TTAB 1985)(CAREER IMAGE and CREST CAREER IMAGES); In re Riddle, 225 USPQ 630 (TTAB 1985)(ACCUTUNE and RICHARD PETTY'S ACCU TUNE); TMEP §1207.07(b)(iii). Here, Applicant has added CONTE which is Italian for “count” and the descriptive terms FINE INSTRUMENTS AND BOWS and a design to the Opposer's COZIO Mark. These additions do not diminish the overall similarities of the marks at issue,

particularly given their use on many identical and/or similar services and being distributed in the same channels of trade to the same consumers. Furthermore, these additional items are not significant in determining the overall commercial impression of the Applicant's Mark. The Applicant was required to disclaim FINE INSTRUMENTS AND BOWS. A disclaimer is an admission that the terms are descriptive. Disclaimed matter is typically less significant or less dominant when comparing marks. See In re Dixie Rests., Inc., 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); In re Nat'l Data Corp., 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). In addition, when a mark such as the Applicant's Mark, consists of both words and a design, greater weight is often given to the words because it is the words the purchasers would use to refer to the services. In re Appetito Provisions Co., Inc., 3 USPQ2d 1553, 1554 (TTAB 1987); T.M.E.P. §1207.01(c)(ii). The Applicant has also admitted that the dominant feature of the respective marks is COZIO. (Vranum Aff., Par. 6)

Opposer's pleaded registration is for standard characters and is not limited to any particular font or stylization. Such a mark can be used in any manner of display including a font similar to one of the Applicant's fonts, and including use in a manner which downplays the sole insignificant differences between the Applicant's mark and the Opposer's mark. See, e.g., In re Melville Corp., 18 U.S.P.Q.2d 1386, 1388 (T.T.A.B. 1991); In re Pollio Diary Products Corp., 8 U.S.P.Q.2d 2012, 2015 (T.T.A.B. 1988). In such a case, confusion would be unavoidable. As such it seems likely that a reasonably prudent purchaser of such services would be confused as to the origin of the services pertaining to the marks.

Finally, the Applicant has admitted that there is a likelihood of confusion between Applicant's Mark and Opposer's Mark. (Vranum Aff., Par. 6).

The Parties' Services and Trade Channels Are Identical

The more closely related the goods or services, the lesser of a showing is needed under the remaining likelihood of confusion factors. Banff, Ltd. v. Federated Dep't Stores, Inc., 6 USPQ2d 1187, 1192 (2d Cir. 1988). Where consumers see the nearly identical marks on many identical goods, minor differences will be virtually meaningless.

In determining whether a likelihood of confusion exists, the party's goods or services must be determined on the basis of the goods or services recited in the application. See, e.g., Hewlett-Packard Co. v. Packard Press Inc., 281 F.3d 1261, 62 U.S.P.Q.2d 1001 (Fed. Cir. 2002); In re Shell Oil Co., 992 F.2d 1204, 26 U.S.P.Q. 1687 n.4 (Fed. Cir. 1993). An applicant may not restrict the scope of its goods covered in the application by extrinsic argument or evidence. See, e.g., In re Bercut-Vandervoort & Co., 229 U.S.P.Q. 763, 764 (T.T.A.B. 1986); In re Dakin's Miniatures Inc., 59 U.S.P.Q.2d 1593, 1596 (T.T.A.B. 1999). If the application describes the goods and/or services broadly and there are no limitations as to their nature, type, channels of trade or classes of purchasers, then it is presumed that the application or registration encompasses all goods and/or services of the type described, that they move in all normal channels of trade, and that they are available to all potential customers. In re Linkvest S.A., 24 U.S.P.Q.2d 1716 (T.T.A.B. 1992); In re Elbaum, 211 U.S.P.Q. 639 (T.T.A.B. 1981); TMEP §1207.01(a)(iii).

The services provided by Opposer under its mark and the services provided by Applicant under its mark are identical and/or at least sufficiently related so that confusion is likely. The Opposer's registration covers "operating on-line marketplaces featuring musical instruments and bows; providing a website featuring a registry of musical instrument information; providing an on-line directory information service featuring information

regarding musical instruments and bows; providing on-line registration services for musical instruments and bows,” in International Class 35. The Applicant’s application is for nearly identical services in Class 35: “Arranging and conducting auctions; on-line trading services in which seller posts products to be auctioned and bidding is done via the Internet,” in International Class 35. Each of the sites is an “on-line marketplace.” In a case such as this, where the goods and/or services of the respective parties are identical or closely related, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods. Shen Mfg. Co. v. Ritz Hotel Ltd., 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b). One must only demonstrate that there is a “viable relationship between the goods or services in order to support a holding of likelihood of confusion.” In re Concordia International Forwarding Corp., 222 U.S.P.Q. 355, 356 (T.T.A.B, 1983).

At a minimum many of the services offered under the two marks are sufficiently “related” such that confusion is likely. The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. See, Safety-Kleen Corp. v. Dresser Indus, Inc., 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP§1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. In re Total Quality Group, Inc., 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP§1207.01(a)(I); see, e.g., On-line Careline Inc. v. Am. Online Inc., 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); In re Martin’s Famous Pastry Shoppe, Inc., 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed.Cir. 1984).

Opposer's services and Applicant's services are also sold in the same channels of trade. (Price Dec., Par. 16). In a case such as this where there are no limitations in the application itself, it is assumed that the products sold under the trademark move through all the ordinary and usual channels of trade for such goods and/or services to all the usual customers for these products. Saab-Scania Aktibolag v. Sparkomatic Corp., 26 U.S.P.Q. 2d 1709 (T.T.A.B. 1993). The result in this case is that the channels of trade in which the services travel, namely, on-line marketplaces and on-line services, are the same for services of both parties.

The consumers targeted by both Opposer and the Applicant are also the same. The services sold under both marks will be marketed and sold to all consumers. (Price Dec., Par. 13). At a minimum, it is clear that there is a large overlap in the customers and potential customers for the respective services. The Applicant has also admitted that the respective services are marketed to the same consumers. (Vranum Aff., Par. 6).

Opposer's COZIO Mark Is Famous

The Opposer's COZIO Mark has achieved a high degree of fame and recognition with the consuming public. (Price Dec., Par. 8, 9, 11). The Applicant admitted that "Opposer's COZIO [Mark] is famous and holds significant value and goodwill in the United States." (Vranum Aff., Par. 6). The more famous a mark, the more likely is the confusion resulting from its infringement, and therefore the more protection it is due. Frisch's Restaurant, Inc. v. Shoney's Inc., 225 U.S.P.Q. 1169, 1171 (6th Cir. 1985).

Opposer Has Substantially Exclusive Use of Its COZIO Mark in Class 35 And Otherwise

Opposer has substantially exclusive use of COZIO in the United States in International

Class 35 and otherwise. Indeed, a review of the USPTO Principal Register of marks that include "COZIO" reveal only the duly registered COZIO Mark of Opposer and the Applicant's CONTE COZIO Mark which is the subject of this proceeding. (Price Dec., Par. 14).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See, In re Shell Oil Co., 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, Courts have consistently held that "Doubt is resolved against the newcomer... for the newcomer has the opportunity of avoiding confusion, and is charged with the obligation to do so." In re Shell Oil Company, 992 F.2d 1204, 1209, 26 U.S.P.Q.2d 1687 (Fed.Cir. 1993), citing, In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 U.S.P.Q.2d 1025 (Fed. Cir. 1988); See also, In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes, 487 F.2d 918, 919, 179 U.S.P.Q 729 (C.C.P.A. 1973). Stated another way, "[i]t is well-settled that one who adopts a mark similar to the mark of another for closely related goods acts at his peril and any doubt there might be must be resolved against him." Carlisle Chem. Works, Inc. v. Hardman & Holden, Ltd., 434 F.2d 1403, 1405, 168 U.S.P.Q. 110 (C.C.P.A. 1970).

In this case, Opposer's use and registration of its COZIO mark precedes the filing date of Applicant's application and its purported date of first use by more than 9 years. The Applicant was well aware of Opposer's registration and could have avoided this controversy by selecting a different mark. As set forth herein the Opposer's COZIO Mark is a famous mark. Such a mark is entitled to a wide latitude of legal protection because consumers are more likely to remember such a mark than they are a weaker mark. Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772, 396 F.3d 1369, 1374, 73 USPQ2d 1689.

1694 (Fed. Cir. 2005). A mark's fame is "a dominant factor in the likelihood of confusion analysis for a famous mark, independent of the consideration of the relatedness of the goods." Recot, Inc. v. M.C. Becton, 214 F.3d 1322, 1328, 54 USPQ2d 1894, 1989. "It is not necessary to show recognition by every segment of the population. When determining likelihood of confusion, fame is measured with regard to 'the class of customers and potential customers of a product or services, and not the general public.' [citation omitted]" TMEP Section 1207.01(d)(ix). In this case, the COZIO Mark has been in use for over 11 years generating substantial revenue and many users. (Price Dec., Par 8, 9, 11).

Therefore, it is clear that consumer confusion is likely based upon the similarity of the marks and the similarity and/or relatedness of the goods, and the fame of the Opposer's mark that consumer confusion is likely.

IV. There Is A Likelihood of Dilution Between Opposer's Mark and the Applicant's Mark

In the alternative, Opposer's opposition should be granted on the basis of its dilution claims. As shown above, the Opposer's COZIO Mark and the Applicant's CONTE COZIO Mark are substantially identical. The Opposer's mark is a famous mark for purposes of dilution. Sec. 1125(a) provides in part:

- (A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a source designation of the goods or services of the mark's owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:
 - (i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.

- (ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.
- (iii) The extent of actual recognition of the mark.
- (iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

The Price Declaration and the evidence attached thereto establish that the Opposer adopted and started using in commerce its COZIO Mark at least as early as 2003. The Applicant admitted that “Opposer’s COZIO [Mark] is famous and holds significant value and goodwill in the United States.” (Vranum Aff., Par. 6). The COZIO Mark is therefore famous and is associated in the minds of the public with the Opposer.

The Applicants’ CONTE COZIO trademark was filed October 17, 2012. The Opposer’s COZIO Mark was already a famous mark by that time. It cannot be disputed that the fame of the COZIO Mark precedes the filing date and the first use date of the Applicant’s Mark.

The Opposer’s famous COZIO Mark will be diluted by blurring by registration of the Applicant’s CONTE COZIO Mark. In Toro the Board held that “blurring occurs when a substantial percentage of consumers, upon seeing the junior party’s use of a mark on its goods, are immediately reminded of the famous mark and associate the junior party’s use of with the famous mark’s owner. The Toro Company v. Torohead, Inc., 61 U.S.P.Q.2d 1164, 1183 (T.T.A.B. 2001). In The NASDAQ Stock Market, Inc. v. Antarctica, S.r.l., 69 U.S.P.Q.2d 1718 (T.T.A.B. 2003), the Board found that dilution was likely even in the absence of survey evidence regarding consumer perception.

A mark does not have to be on par with MCDONALD’S or COCA-COLA to be considered famous for purposes of dilution. For example the following marks were all found

to be famous under a dilution claim: ARTHUR THE AADVARK (Brown v. It's Entertainment, Inc., 34 F. Supp.2d 854, 49 U.S.P.Q.2d 1939 (E.D.N.Y. 1999)); INTERMATIC (Intermatic, Inc. v. Toeppen, 947 F. Supp. 1227, 40 U.S.P.Q.2d 1412, 41 U.S.P.Q.2d 1223 (N.D. Ill. 1996)); JEWS FOR JESUS (Jews for Jesus v. Brodsky, 993 F. Supp. 282, 46 U.S.P.Q.2d 1652 (D.N.J. 1998), *aff'd* without opinion, 159 F.3d 1351 (3d Cir. 1998)); LEXINGTON (Lexington Management Corp. v. Lexington Capital Partners, 10 F.Supp. 2d 271, 47 U.S.P.Q.2d 1558 (S.D.N.Y. 1998)); NAILTIQUES (Nailtiques Cosmetic Corp. v. Salon Sciences Corp., 41 U.S.P.Q.2d 1995 (S.D. Fla. 1997)); and PANAVISION (Panavision Int'l L.P. v. Toeppen, 945 F.Supp. 1296, 40 U.S.P.Q.2d 1908 (C.D. Cal. 1996), *aff'd*, 141 F.3d 1316, 46 U.S.P.Q.2d 1511 (9th Cir. 1998)). None of those marks are as well-known as FB.


In this case, the fame of the COZIO trademark is strong, the Opposer has used its mark for over 9 years prior to the filing and/or use of the Applicant's mark and the relevant public is well aware of the COZIO brand and associates the COZIO Mark with the Opposer. It would only be natural for the public to believe that the Applicant's CONTE COZIO services are sponsored by, created by or associated with the Opposer.

SUMMARY

Based upon its prior and continuous use of its mark, Opposer's trademark rights in its mark are superior to the rights, if any, that Applicant has in its mark. The Applicant's mark is confusingly similar to Opposer's mark because the two marks share an identical dominant term, sound alike and have the same commercial impression, they are sold in the same channels of trade to the same set of consumers and some of the Applicant's services are identical to the Opposer's services while the rest are related. Opposer's mark is a famous mark and is therefore entitled to broad legal protection. Applicant's mark will dilute the Opposer's mark. Granting Applicant's application will be to the detriment of Opposer who has spent significant sums of money establishing its service and trademark in the market place. Accordingly, Applicant's application should be denied.

Dated: New York, New York
August 6, 2014

GORDON, HERLANDS,
RANDOLPH & COX LLP

By: 
Peter J. Vranum
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CERTIFICATE OF SERVICE

The undersigned, counsel for Opposer, hereby certifies under penalty of perjury that I caused a true correct copy of the attached OPPOSER'S MOTION FOR SUMMARY JUDGMENT to be sent by First Class Mail, on August 6, 2014, to:

Conte Cozio Auctions, LLC
dba Conte Cozio
2016 Wallace Street, Suite 1R
Philadelphia, PA 19130

And by sending a copy by email to "info@contecozio.com"



Peter J. Vranum

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DECLARATION OF JASON PRICE IN SUPPORT OF
OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Jason Price, declares as follows:

1. I am the manager of Opposer, Tarisio Auctions, LLC ("Opposer") the successor in interest to Cozio, LLC. I have been the manager of Opposer since its formation in 1999 , an officer of Cozio, LLC since 2012 and by virtue of my positions with such companies I have knowledge of the facts set forth herein.

2. Tarisio by and through its licensee, Cozio, LLC, is engaged in operating on-line marketplaces featuring musical instruments and bows; providing a website featuring a registry of musical instrument information; providing an on-line directory information service featuring information regarding musical instruments and bows; and providing on-line registration services for musical instruments and bows.

3. Since April 30, 2003, the services provided by Tarisio and its predecessor in interest, Cozio, LLC, have been widely advertised, offered for sale and sold throughout the

3. Since April 30, 2003, the services provided by Tarisio and its predecessor in interest, Cozio, LLC, have been widely advertised, offered for sale and sold throughout the United States under the COZIO trademark. The COZIO Trademark has at all times been owned exclusively by Tarisio or its predecessor in interest.

4. As a result of Tarisio's exclusive and extensive use of the COZIO Trademark it has acquired enormous value and recognition in the United States and throughout the world. The COZIO Trademark is well known to the relevant consuming public and trade as identifying and distinguishing Tarisio exclusively and uniquely as the source of origin of its quality services in connection with which the COZIO Trademark is applied. The COZIO Trademark is both distinctive and famous.

5. On November 28, 2012, Tarisio applied to register the COZIO trademark on the Principal Register of the United States Patent and Trademark Office as Application Serial No. 85790001 for use in connection with "operating on-line marketplaces featuring musical instruments and bows; providing a website featuring a registry of musical instrument information; providing an on-line directory information service featuring information regarding musical instruments and bows; and providing on-line registration services for musical instruments and bows," in International Class 35. A registration was issued for the COZIO Mark on October 22, 2013 under Registration No. 4420867 which registration is valid and subsisting. A copy of the USPTO database printout showing such trademark registration is annexed hereto as Exhibit A.

6. Applicant's services are directed and targeted towards the same group of ultimate consumers as are Tarisio's services. Copies of printouts from the Applicant's website showing its unauthorized use of the COZIO mark are attached as Exhibit B.

7. On October 17, 2012, Applicant applied to register the mark CONTE COZIO FINE INSTRUMENTS AND BOWS AND DESIGN on the Principal Register of the United States Patent and Trademark Office as Application Serial No. 85756067 for use in connection with “arranging and conducting auctions; on-line trading services in which seller posts products to be auctioned and bidding is done via the internet,” in International Class 35. The application alleges a date of first use of the mark in commerce of August 25, 2012 (the “CONTE COZIO Mark”). A copy of the USPTO database printout showing such trademark application is annexed hereto as Exhibit C.

8. Revenue for services provided under the Opposer’s COZIO trademark was approximately \$30,000 in 2003. This figure has increased year by year and has been at least \$80,000 per year for the past 5 years, ie., since 2009.

9. The Opposer’s COZIO website had approximately 20,000 visitors during calendar year 2003. This number has increased steadily year by year and in 2013 the number of visitors was 160,000.

10. Opposer’s COZIO services are provided through the Opposer’s website “tarisio.com/cozio-archive.com.” The Opposer’s website and/or its predecessor website have been live since 2003. Attached hereto as Exhibit D copies of printouts from the website showing use of the COZIO Mark.

11. Opposer’s services under the COZIO mark have been widely advertised, offered, sold and distributed throughout the United States. As a result of the extensive use of the COZIO mark, the COZIO mark has acquired considerable value and has come to be associated by the public with a single source of origin, namely, Opposer.

12. Opposer's services rendered under the COZIO mark are offered and provided throughout the United States and would travel in the same channels of trade as the Applicant's services.

13. Opposer's services are marketed to all consumers.

14. Opposer has substantially exclusive use of COZIO in the United States. Indeed, a review of the USPTO Principal Register of marks that include "COZIO" reveal only Opposer's duly registered COZIO Mark and the Applicant's CONTE COZIO application which is the subject of this proceeding. A copy of the a USPTO database printout for the search result is attached hereto as Exhibit E.

15. In this case, it is obvious that the Opposer's COZIO Mark and the Applicant's CONTE COZIO Mark share the common term COZIO. Indeed, the COZIO portion of the Applicant's mark is the dominant feature of the mark. Because of its stylization, attention is drawn to the CONTE COZIO and hence COZIO component of Applicant's mark and as such the inclusion of COZIO is instrumental in creating the overall commercial impression.

16. Based upon my familiarity with the market for the online sale, registration and auction of musical instruments and with the COZIO services and marketing, specifically, there is no question in my mind that registration and use of the CONTE COZIO Mark by the Applicant would cause confusion in the market place. The CONTE COZIO Mark includes Opposer's COZIO Mark in its entirety and it is used in connection with many of the same services which are sold in the same channels of trade to the same consumers.

I declare under penalty of perjury that the foregoing is true and correct. Executed this
44 day of August, 2014 at New York, New York.

A handwritten signature in black ink, appearing to read "J. Price", written above a horizontal line.

Jason Price

EXHIBIT A



United States Patent and Trademark Office

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COZIO

Word Mark

COZIO

Goods and Services

IC 035. US 100 101 102. G & S: Operating on-line marketplaces featuring musical instruments and bows; Providing a website featuring a registry of musical instrument information; Providing an on-line directory information service featuring information regarding musical instruments and bows; Providing on-line registration services for musical instruments and bows. FIRST USE: 20030430. FIRST USE IN COMMERCE: 20030430

Standard Characters Claimed

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number 85790001

Filing Date November 28, 2012

Current Basis 1A

Original Filing Basis 1A

Published for Opposition April 30, 2013

Registration Number 4420867

Registration Date October 22, 2013

Owner (REGISTRANT) Tarisio Auctions LLC LIMITED LIABILITY COMPANY MASSACHUSETTS 244 West 54th Street New York NEW YORK 10019

Attorney of Record William H. Cox

Type of Mark SERVICE MARK

Register PRINCIPAL
**Live/Dead
Indicator** LIVE

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EXHIBIT B



Fine Instruments and Bows

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Welcome to Conte Cozio Auctions



Violin by
Giovanni Battista Guadagnini

Parma, 1763

Conte Cozio Auctions is proud to present this fine example from the hands of one of the most illustrious violin makers in the history, G.B. Guadagnini. The characteristic reddish varnish of this instrument flaunts the velvety pattern of the slab cut maple back. The higher setting of the soundholes is characteristic of the Parma period with the original positioning notches that since have been filled, cut on the lower part of the f hole.

Having gained world-wide recognition for the tonal and aesthetic qualities, violins by this Master are in demand by professionals and connoisseurs alike. This particular instrument was owned by a concertmaster of a prominent European orchestra. [cc](#)



Violin by J.B. Vuillaume,
Paris, 1828





**Violin by G.A. Chanot,
Manchester, 1899**

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We accept Cashier's Checks, Bank
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About Us

Conte Cozio auctions

A pivotal figure in the history of the violin, Count Ignazio Alessandro Cozio of Salabue was perhaps the most important patron of the art of violin making. Known to violin enthusiasts as Conte Cozio, he was a passionate connoisseur of violins, preserving and passing on hundreds of historic instruments a number of which have survived to our time. Following the great tradition, Conte Cozio Auctions had created a reliable and efficient trading venue for violin professionals and collectors world-wide. The global exposure combined with prices that accurately reflect current market trends and the lowest commissions in the industry makes Conte Cozio a preferred place to purchase or sell fine instruments.

Endangered Species and Musical Instruments

While the greater majority of string instruments maintain uniformity in the type of materials used, there are few examples that step outside of the ordinary. The most common variant is a bow frog that can be made of tortoiseshell or ivory, both of which fall under the endangered species category of the CITES (Convention on International Trade in Endangered Species) that restricts the movement of such items. Prospective purchasers are advised that several countries prohibit the importation of property containing materials from endangered species, including but not limited to ivory and tortoiseshell. To avoid any delays in shipment and receiving of the purchased lot, we urge all prospective customers to

familiarize themselves with relevant customs regulations in the country where the delivery of purchased item will take place.

Restrictions for items sold at Conte Cozio Auctions:

The Endangered Species Act of 1973 of the United States provides specific guidelines for commercial and non-commercial handling of endangered species materials; the handling of enforcement of this act is charged to US Fish & Wildlife Service. Conte Cozio's policies on lots incorporating endangered species can be summed up as follows:

1. Conte Cozio Auctions do not sell endangered species materials which are less than 100 years old.
2. Conte Cozio will not ship an item containing endangered species materials abroad unless a CITES exemption permit has been obtained.
3. Conte Cozio will obtain a CITES exemption permit for any endangered species items solicited or receive from abroad, regardless of age, at a mutually agreed distribution of expenses between the consignor and the auction house.

While a bidder may obtain a permit to ship CITES materials on his/her own, Conte Cozio can act as an agent on behalf of a bidder in filing for such a permit. An all-inclusive fee of \$150 will be charged to the bidder's account. Keep in mind that while most of the permits are granted, Conte Cozio Auctions cannot guaranteed nor be held responsible for any delays or denials on behalf of the US Fish & Wildlife Service that may result in the delay of shipment.

Terms and conditions

Buyer Information

Registration

To participate in an auction, all bidders must register. Registration is required for each upcoming auction. A convenient online registration form is provided to all prospective bidders. All information provided by the registrants is kept strictly confidential and secure. Conte Cozio reserves the right to cancel any registered account that violates the rules and regulations of the auction.

It is the bidder's responsibility to keep his or her registration information up to date. Should any technical difficulties be encountered during the registration, we ask you to call us at 267.987.5206.

Bidding Increments

Bidding will be conducted in United States Dollars with the following increments:

<i>Starting Bid:</i>	<i>Increments:</i>	<i>Starting Bid:</i>	<i>Increments:</i>
\$25 to \$100	by \$10	\$30,000 to \$47,500	by \$2,500

<i>Starting Bid:</i>	<i>Increments:</i>	<i>Starting Bid:</i>	<i>Increments:</i>
\$150 to \$300	by \$25	\$50,000 to \$95,000	by \$5,000
\$350 to \$950	by \$50	\$100,000 to \$240,000	by \$10,000
\$1,000 to \$2900	by \$100	\$250,000 to \$475,000	by \$25,000
\$3,000 to \$4,750	by \$250	\$500,000 to \$950,000	by \$50,000
\$5,000 to \$9,500	by \$500	\$1,000,000 to \$2,900,000	by \$100,000
\$10,000 to \$29,000	by \$1,000	\$3,000,000 and up	by \$200,000

Placing Bids

The automated bidding process reflects the bidding increment policy listed above. Each of the catalogued items has a Bid Here button that will allow the bidders after successful registration and entering his or her Bidder ID and Password to place the bid. The default amount for each lot is the opening bid. If a bid was already placed, the bidder will have a choice in entering the next increment or any amount above, which will constitute a proxy bid.

Proxy bidding allows the bidder more flexibility. By selecting a maximum amount for any particular item on the auction, the bidder is allowing auction's software to act as an auctioneer by placing appropriately incremented bids until the entered amount is exceeded or the auction ends. In both cases, Conte Cozio will notify the seller via email.

Although we encourage bidders to place bids on line, **we are accepting telephone bids** for lots with low-end estimates of \$900 and above. Telephone bids are recorded, and all prospective bidders consent to the recording of their conversations. To utilize this option a bidder should contact Conte Cozio Auctions no later than 24 hours prior to the end of the lot of interest.

Bidding Notification

After a successful bid is made, the bidder will receive an email confirming the amount of his or her bid. An email notification will also be sent to the bidder if he or she was outbid.

Absentee bids

Phone, email and fax bids should be made no later than 24 hours prior to the end of the target lot. We will collect the information such as name, address, and credit worthiness of the prospective bidder.

Such bids will be treated as proxy bids and entered into the system with an assigned id.

Conte Cozio will make every effort for accurate and timely execution of the bid and will not be responsible for any errors or failure to execute left bids. Outbid notification is not possible for phone, email or in person bids.

Absentee bids are treated as proxy bids. If a proxy bid left on a lot is greater than or equal to the reserve amount placed and the bidding ends without the reserve being met, the reserve amount will automatically apply to the lot. In this situation, the proxy bid amount meeting the reserve will win by default.

For phone, mail, or in person bids left without email address, Conte Cozio will make every attempt to contact the bidder in timely manner, but will not be held responsible for outbid notification.

Due to various individual bandwidths as well as personal computer settings, the auction software may not properly display the bidding information on the screen or send a timely email notification. We always encourage the bidders to click on Bids button as well as a refresh button to get the most current lot price information. Conte Cozio cannot guarantee continuous, uninterrupted, or secure access to the auction site nor be held liable for any damages resulting from the loss of internet transmission, software malfunctions or any other related factors.

In case of experiencing Internet and/or Server service outages during which Bidders cannot participate or place bids, Conte Cozio may at its discretion extend the bidding time for the auction.

Bidders unable to place their Bids through the Internet are asked to contact Conte Cozio Auctions at 267.987.5206.

Reserve

Some of the lots sold will carry a confidential minimum price known as reserve below which a lot will not be sold. Upon reaching the reserve, a winning bidder will receive an immediate notification of the reserve being met. If a proxy bid left on a lot is greater than or equal to the reserve amount placed and the bidding ends without the reserve being met, the reserve amount will automatically apply to the lot. In this situation, the proxy bid amount that meets the reserve will win by default.

Time Extension

Time extension is a feature that allows the highest bidder who had been outbid in the last 5 minutes an additional 2 minutes that is automatically added to the ending time of the lot.

After the Auction

Payments

All sales are conducted in United States dollars. Winning bidders will be notified promptly after the close of sale by email or the telephone. Payment is due upon presentment of an invoice, but no later than seven (7) working days after the close of bidding. The accepted forms of payment are a personal/company check, cashier's check, money order, wire transfer, cash or credit card. A processing fee of three percent (3%) is applied to all credit card payments. All payments and notices

should be sent to Conte Cozio Auctions LLC, 2016 Wallace Street, Suite 1R, Philadelphia, PA 19130. Each Lot purchased carries a Buyer's Premium equal to eighteen percent (18%) of the total purchased price up to two hundred fifty thousand dollars (\$250,000) and ten percent (10%) of the total purchased price of two hundred fifty thousand dollars (\$250,000) and above.

A full payment plus any applicable sales taxes and all charges associated with shipping (including insurance), and the Buyer's Premium shall be received by Conte Cozio Auctions prior to releasing or sending any and all of the purchased lots. Conte Cozio reserves the right to void an invoice if payment in full is not received within ten (10) days after the close of the Auction. In cases of nonpayment, Conte Cozio's election to void a sale does not relieve the Bidder from their obligation to pay Auctioneer its fees (seller's and buyer's premium) on the lot and any other damages pertaining to the lot.

No sales tax is charged for shipped purchases. The State's seven percent (7%) tax is applicable to all lots picked up at our locations.

Failure to pick-up or arrange shipping in a timely fashion (within ten days) shall subject Lots to storage and moving charges, including a \$100 administration fee plus \$10 daily storage for larger items and \$5.00 daily for smaller items (storage fee per item) after 30 days. In the event the Lot is not removed within ninety days, the Lot may be offered for sale to recover any past due storage or moving fees, including a 10% Seller's Commission.

Shipping

Unless alternative shipping instructions are received from the bidder, the purchased lots that have been paid in full will shipped by the means indicated on Conte Cozio's preliminary invoice. Conte Cozio will charge buyers for packing and shipping within the Continental United States and Canada by UPS or FedEx ground in accordance to the following rate schedule:

<i>Type of Item:</i>	<i>Shipping Cost:</i>
Violin/viola/cello bow	\$15 per bow
Violin/Viola	\$45 per instrument
2 to 4 violins	\$80
One cello	\$90

The above rates include one thousand dollar (\$1,000) insurance per package unless the shipped items were purchased at a lesser price. All other rates will be quoted based on destination and/or value. Conte Cozio shall have no responsibility for any loss or damage to any Lot incurred in shipment.

NOTE: On all foreign shipments, any risk of loss during shipment will be borne by the Bidder following Conte Cozio's delivery to the Bidder's designated common carrier or third-party shipper.

Warrantees and Guarantees

All catalog descriptions and statements and subsequent invoices regarding measurement, authorship, source or origin, or other aspects are qualified opines and do not constitute a warranty or representation, and are provided for identification purposes only. Auctioneer warrants only such authorship of each Lot as set out in the BOLD face type heading in the catalog description of the lot, with the following exclusions: this warranty does not apply to any catalog description where it was specifically mentioned that there is a conflict of specialist opinion on the authorship of a lot; or authorship which on the date of Auction was in accordance with the then generally accepted opinion of scholars and specialists, despite the subsequent discovery of new information, whether historical or physical, concerning the craftsman, his students, school, workshop or followers; or opines which may be proven inaccurate by means of scientific processes not generally accepted for use or which were unreasonably expensive or impractical to use at the time of publication of the catalog. Such limited warranty as to authorship is provided for a period of fifteen (15) days from the date of the auction's end and is only for the benefit of the original purchaser of record and is not transferable, and any claim regarding a bold-faced provision must be accompanied by three written estimates by independent and authorized by Conte Cozio Auctions appraisers in support of the claim. It is specifically understood that any refund agreed to by Conte Cozio would be limited to the purchase price.

In the event Auctioneer cannot deliver the lot or subsequently it is established that the bold faced section of description is incorrect, Conte Cozio's liability shall be limited to rescission of sale and refund of purchase price; in no case shall Conte Cozio's maximum liability exceed the high bid on that lot, which shall be deemed for all purposes the value of the lot. After the warranty period of 15 days has elapsed, Auctioneer's maximum liability shall be limited to any commissions and fees Auctioneer earned on that lot. If Conte Cozio determines that the refund of the purchase price not applicable, the Lot will be returned to the Purchaser at his or her sole risk and expense. All packaging, handling, shipping and insurance shall be the sole responsibility of the Purchaser.

Provenance and authenticity are not guaranteed by the consignor or the Auctioneer. While every effort is made to determine provenance and authenticity, it is the responsibility of the Bidder to arrive at their own conclusion prior to bidding. Provenance or other information regarding history of ownership may be provided if known, or may be excluded at the request of the consignor.

Catalog practice

Glossary

Please note that all statements made in Conte Cozio's catalogs, excluding those in BOLD-face type, regarding authorship, attribution, origin, date, age, provenance and condition are statements of opinion and are not treated as a statement of fact.

1. BY NICOLÒ AMATI

In our opinion, the work is by the maker.

2. ATTRIBUTED TO NICOLÒ AMATI

A work that bears an attribution to the maker by popular consensus or previous scholarship, but not necessarily reflecting the opinions of the authors of this catalog.

3. WORKSHOPOF NICOLÒ AMATI

In our opinion, the work was likely executed under his supervision and/or his direct involvement.

4. SCHOOL or CIRCLE OF NICOLÒ AMATI

In our opinion, the work is by a follower of the maker or is closely related to the style of the maker.

5. LABELED, BRANDED, or STAMPED NICOLÒ AMATI

The work bears a graphic form of identification making a reference to the maker, but is not by him.

6. POSSIBLY BY NICOLÒ AMATI

A work whose attribution to the maker is uncertain due to divided opinion.

7. COMPOSITE

An instrument that has either top or back that is not original. Instruments with replaced scrolls or ribs not considered composite for the purpose of this catalog.

Estimates

Pre-auction estimates of value or “bidding estimates” are opinions provided solely as a convenience to clients, and should only be used as approximations of current market value. Estimates do not include Buyer's Premiums or sales tax.

Condition report

Conte Cozio Auctions does not provide condition descriptions in its catalogs. The absence of condition description report does not imply that a lot is free from damage, repairs, faults or imperfections. Prospective buyers are encouraged to thoroughly inspect Lots of interest to make their own determination of the item's condition. Conte Cozio will provide a detailed written condition report on a Lot delivered by email or fax only as a convenience to bidders upon request. While such reports are prepared as accurately and comprehensively as possible, they in no way express or imply warranties of any kind on the part of Conte Cozio or its specialists.

Measurements AND weights

Certain measurements such as the length of back of the violin family of instruments as well as weights of bows are provided in the catalog for the purpose of guiding the prospective buyers. While all measurements and weights are prepared carefully and in good faith, they are not meant to express or imply any warranties. The bidders are always advised to make personal measurements prior to placing any bids.

Provenance

Certain Lots are sold with either a certificates of authenticity, letters, or other documents as noted in the catalog description with the name and date of the issuing expert. Such documents will be included with the pertaining lot after all payments are made by the winning bidder.

Late addition/withdrawals

At any time prior to auction's end, Conte Cozio reserves the right to withdraw or add a lot with no prior notification or warning. All entered bids for a withdrawn lot will automatically be nulled and void and neither the Seller nor the Buyer be under any liability nor obligation to complete the sale.

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Barry Auguste
December 24, 2013 at 11:50am

<http://gizmodo.com/5991878/a-laser-violin-would-have-surely-blown-amadeus-mind>


Like Comment



Barry Auguste
December 7, 2013 at 1:45pm

<http://www.nytimes.com/slideshow/2011/10/09/nyregion/20111009JOINTss.html>

Like Comment




Anatoli Dragan
November 25, 2013 at 1:49pm

If I have money and could play on viola....

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July 3




50 Rare and Unseen Photos of Composers In Their Everyday Life
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Our greatest connection to a composer is through his music. And as a lot of the music we listen to is so exceptional, it is easy to imagine that the person who created it is also entirely exceptional. While there is no ...

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Michael Hobart 4m

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Kangchi Suh 4h

Clifford Allen Miller

Liselotte Winblad... 12m

Sue Moore 29m

Ronni Hammer Je... 19h

Janne Lorentzen-Al... 1h

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Christina Hebart 2h

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Thomas Winblad 19m

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Conte Cozio Musical Instrument Auctions



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June 5

More woes for traveling musicians.



Budapest Festival Orchestra violin bows seized by New York airport officials over ivory concerns
www.thestrada.com

Seven bows belonging to members of the Budapest Festival Orchestra (pictured) were seized by officials at New York's John F.

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April 17

April 2013 Auction is featuring a fine violin by Giovanni Battista Guadagnini, Parma 1763.



Violin by
Giovanni Battista Guadagnini
Parma, 1763

Conte Cozio Auctions is proud to present this fine example from the hands of one of the most illustrious violin makers in the history, G.B. Guadagnini. The characteristic reddish varnish of this instrument flaunts the velvety pattern of the slab cut maple back. The higher setting of the soundholes is characteristic of the Parma period with the original positioning notches that since have been filled, cut on the lower part of the f hole.

Having gained world-wide recognition for the tonal and aesthetic qualities, violins by this Master are in demand by professionals and connoisseurs alike. This particular instrument was owned by a concertmaster of a prominent European orchestra. cc



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Conte Cozio Musical Instrument Auctions
April 17

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Violin by
Giovanni Battista Guadagnini
Parma, 1763

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Having gained world-wide recognition for the tonal and aesthetic qualities, violins by this Master are in demand by professionals and connoisseurs alike. This particular instrument was owned by a concertmaster of a prominent European orchestra. cc



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March 28

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	Annie Hobart	Web
	Bruce Tomko	Mobile
	Don Peebles	
	Michael Hobart	4m
	Michael Borodinsky	14h
	Kangchi Suh	4h
	Clifford Allen Miller	
	Liselotte Winblad...	12m
	Sue Moore	29m
	Ronni Hammer Je...	19h
	Janne Lorentzen-Al...	1h
	Colleen Miller	
	Christina Hobart	2h
	Eric Rossol	
	Jennifer Presby	1d
	Sean Jameson	20m
	Thomas Winblad	19m
	Tom Hallowell	
	Pete Jameson	21m

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Conte Cozio Musical Instrument Auctions



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Conte Cozio Musical Instrument Auctions

March 3

Our Spring 2014 sale will feature a superb violin by G.B. Guadagnini!



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Conte Cozio Musical Instrument Auctions

December 31, 2013





















Wishing you a very happy and prosperous New Year!



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EXHIBIT C



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Fine Instruments and Bows

Word Mark	CONTE COZIO FINE INSTRUMENTS AND BOWS
Translations	The English translation of "CONTE" in the mark is "COUNT".
Goods and Services	IC 035. US 100 101 102. G & S: Arranging and conducting auctions; On-line trading services in which seller posts products to be auctioned and bidding is done via the Internet. FIRST USE: 20120825. FIRST USE IN COMMERCE: 20120913
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	02.01.02 - Men depicted as shadows or silhouettes of men; Silhouettes of men 02.01.06 - Colonial dress, men wearing; Men in colonial dress, Pilgrims, Quakers and colonial militiamen; Militiamen; Pilgrims, men; Quakers 02.01.37 - Busts of men in profile; Heads of men in profile; Men - heads, portraiture, or busts in profile; Portraiture of men in profile
Serial Number	85756067
Filing Date	October 17, 2012
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 16, 2013
Owner	(APPLICANT) Conte Cozio Auctions LLC DBA Conte Cozio LIMITED LIABILITY COMPANY NEW JERSEY 2016 Wallace Street Suite 1R Philadelphia PENNSYLVANIA 19130
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FINE INSTRUMENTS AND BOWS" APART FROM THE MARK AS SHOWN
Description of Mark	The color(s) white, blue, brown is/are claimed as a feature of the mark. The mark consists of a silhouette of a nobleman's head outlined in blue with a white interior, the word "CONTE" appears to the left of the head and the word "COZIO" appears to the right, both words appear in a blue script

font; the wording "FINE INSTRUMENTS AND BOWS" appears beneath and in a smaller brown font.

Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

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EXHIBIT D

Please note: New end dates for our August sale: now ending August 13 & 14!

Tariso
FINE INSTRUMENTS & BOWS

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Cozio
ESSENTIAL REFERENCE FOR
FINE INSTRUMENTS & BOWS

About Cozio

Cozio is the world's largest source of stringed instrument and bow data, containing over 2,500 makers, 30,000 instrument and bow records and 50,000 historical auction price records. It was founded by Philip E. Margolis in 2003 to make information about fine instruments available to the wider public. Tariso acquired Cozio in 2012 and Cozio now incorporates Tariso's own extensive photo archive of instruments and bows.

How Cozio got its name

Cozio is named after Count Ignazio Alessandro Cozio di Salabue (1755–1840), who was arguably the first great collector and connoisseur of stringed instruments. Having inherited his father's estate at the age of 18, Cozio was able to pursue his fascination for fine violins. He was one of the first to recognize the genius of Stradivari, and later became a sponsor of G.B. Guadagnini. He amassed a large collection of valuable instruments and acquired the contents of the Stradivari workshop, including tools, moulds and patterns. He also kept detailed notebooks of makers and instruments, published under the name Carteggio, which have proved extremely helpful in understanding the violin making world in the latter part of the 18th century.

Cozio was forced by financial difficulties to sell most of his collection in the early 19th century, and was assisted in this by one of the most enterprising dealers of the time, Luigi Tariso (c.1790–1854). Tariso sold many of Cozio's instruments to dealers in Paris but kept others for himself, most famously the pristine 1716 'Messiah' Stradivari. After Tariso's death over a hundred instruments were found in his Milan apartment, and his collection was bought in its entirety by J.B. Vuillaume.

Errors and omissions

Accuracy is our goal, so if you spot any errors or missing or misleading information on Cozio, please let us know. You can email us at info@cozio.com or [report an error via the online form](#).

Browse the Cozio Archive 

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Essential reference for the string world – over 30,000 instruments and bows with photos, provenance, prices and expert commentary.

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United States

Email: info.newyork@tariso.com

Tel: +1 212 307 7224
Fax: +1 212 202 4660

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Tariso Europe
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United Kingdom

Email: info.london@tariso.com

Tel: +44 (0) 20 7354 5763
Fax: +44 (0) 20 7900 3354



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EXHIBIT E



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<input type="checkbox"/>	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
<input checked="" type="checkbox"/>	1 85790001	4420867	COZIO	TSDR	LIVE
<input checked="" type="checkbox"/>	2 85756067		CONTE COZIO FINE INSTRUMENTS AND BOWS	TSDR	LIVE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X	
TARISIO AUCTIONS LLC,)
)
Opposer,)
)
v.)
)
CONTE COZIO AUCTIONS)
LLC DBA CONTE COZIO,)
)
Applicant.)
-----X	

Opposition No. 91211879
Application Serial No. 85756067

AFFIDAVIT OF PETER J. VRANUM IN SUPPORT OF
OPPOSER'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Peter J. Vranum, being duly sworn deposes and says:

1. I am an attorney admitted to practice in the State of New York, and of counsel to Gordon, Herlands, Randolph & Cox LLP, attorneys for Opposer, Tarisio Auctions LLC ("Opposer"). I am fully familiar with the facts set forth herein.

2. I submit this reply affidavit in support of Opposer's motion under Rule 56 of the Federal Rules of Civil Procedure ("Fed. R. Civ. Pro.") for an order granting summary judgment against the Applicant, refusing registration of trademark application Serial No. 85756067 for CONTE COZIO FINE INSTRUMENTS AND BOWS (the "CONTE COZIO Mark") and sustaining the Opposer's Notice of Opposition.

3. Opposer commenced this action by serving and filing its notice of opposition dated August 5, 2013 (the "Notice of Opposition"). The Applicant filed an answer generally denying the allegations in the Notice of Opposition and asserting several affirmative defenses.

4. On November 12, 2013 Opposer served its initial disclosures pursuant to Fed. R. Civ. P. 26(a). Applicant did not and has not to date served its required initial disclosures. On January 24, 2014 Opposer served Opposer's First Request for Admissions, Nos. 1-29 (the "Requests for Admissions"). A copy of the Requests for Admissions is attached hereto as Exhibit A. Responses were due 30 days after service. Applicant failed to timely respond to the Requests for Admission and to date has not responded.

5. On March 31, 2014 Opposer served Opposer's First Set of Interrogatories (the "Interrogatories") and Opposer's First Set of Requests for Production of Documents and Things Directed to Applicant (the "Requests for Production"). Copies of the Interrogatories and Requests for Production are attached hereto as Exhibits B and C, respectively. Applicant's responses to the Interrogatories and Requests for Production were due by 30 days after service. On May 24, 2014 and June 9, 2014, Opposer wrote to Applicant regarding responses to the outstanding discovery demands. Opposer also discussed the issue with Applicant by telephone on at least two occasions. Applicant repeatedly stated the responses were forthcoming but gave no date when they would be served. To date no responses have been received.

6. A party's failure to respond to requests for admissions is deemed an admission. Accordingly, Applicant has admitted the following allegations which warrant the entry of summary judgment in favor of Opposer:

"...Applicant markets its services under the Applicant's Mark to the same consumers to which

Opposer markets its services under Opposer's Mark." (Request No. 14)

"...Applicant's Mark was not used in trade or commerce in the United States prior to 2012."

(Request No. 16)

"...Applicant's Mark is designed to connote and build upon the history, goodwill, and business reputation of Opposer." (Request No. 17)

"...the dominant feature of Applicant's Mark is the term 'COZIO.'" (Request No. 18)

"...the dominant feature of Opposer's Mark is the term 'COZIO.'" (Request No. 19)

"...Opposer's COZIO [Mark] is famous and holds significant value and goodwill in the United States." (Request No. 22)

"...Opposer has been using the COZIO mark in commerce to provide on-line services featuring musical instruments since at least as early as 2003." (Request No. 23)

"...there is a likelihood of confusion between Applicant's Mark and Opposer's Mark." (Request No. 27)

"...Opposer used Opposer's Mark in commerce long before Applicant commenced use in commerce of Applicant's Mark." (Request No. 28)

Peter J. Vranum

Sworn to before me this
6th day of August, 2014

notary public

ELISABETH ST. BLAISE MCCARTHY
Notary Public, State of New York
NO. 02MC4832167
Qualified in Kings County
Commission Expires FEB. 4, 20 18

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X	
TARISIO AUCTIONS LLC,)
)
Opposer,)
)
v.)
)
CONTE COZIO AUCTIONS,)
LLC DBA CONTE COZIO,)
)
Applicant.)
-----X	

Opposition No. 91211879
Appl. Serial No. 85756067

OPPOSER'S FIRST REQUEST FOR ADMISSIONS. NOS. 1- 29

Pursuant to 37 C.F.R. §2.120 and Rule 36 of the Federal Rules of Civil Procedure, Applicant is requested to submit a response within thirty (30) days of the date of service hereof at the offices of Gordon, Herlands, Randolph & Cox LLP, 355 Lexington Avenue, New York, New York 10017, to the following requests for admissions.

Definitions of Terms

1. The terms "You," "Your," and "Applicant" mean Conte Cozio Auctions, LLC dba Conte Cozio, its present and former divisions, subsidiaries and related entities, and all present and former partners, employees, officers, directors, agents, representatives, attorneys, or any other persons acting at its direction, under its control or on its behalf.

2. The term "Applicant's Mark" means the Applicant's trademark that is the subject of this opposition proceeding, namely, application Serial No. 85756067.

3. The term "Opposer's Mark" means Opposer's trademark cited in the Opposer's Notice of Opposition for the mark COZIO and as shown in U.S. Trademark Application Serial No. 85790001.

4. The terms "Trademark" and "Mark" mean federally registered and state registered trademarks, service marks and trade names; unregistered trademarks, service marks and trade names; and trademarks, service marks and trade names at common law in any jurisdiction.

5. The term "Relating To" means referring to, pertaining to, consisting of, constituting, memorializing, confirming, containing or otherwise connected to.

6. The words "and," "and/or," and "or" refer to both the conjunctive and disjunctive meaning. The word "any" shall mean "each and every" as well as "anyone."

Admission Request No. 1

Admit that Applicant had actual knowledge of Opposer's COZIO mark:
(a) at the time of adoption of Applicant's Mark, and (b) at the time of filing the application to register Applicant's Mark.

Admission Request No. 2

Admit that Applicant had actual knowledge of Opposer's use of its COZIO mark in connection with online services relating to musical instruments: (a) at the time of adoption of Applicant's mark, and (b) at the time of filing the application to register Applicant's Mark.

Admission Request No. 3

Admit that both Applicant's Mark and Opposer's Mark contain the identical term COZIO.

Admission Request No. 4

Admit that the identification of services in Applicant's application serial no. 85756067 and in Opposer's application serial no. 85790001, each comprise on-line services.

Admission Request No. 5

Admit that the identification of services in Applicant's application serial no. 85756067 and in Opposer's application serial no. 85790001, are related services.

Admission Request No. 6

Admit that the services in Applicant's application serial no. 85756067 and in Opposer's application serial no. 85790001, are likely to travel through the same channels of trade.

Admission Request No. 7

Admit that Applicant did not conduct a trademark search for Opposer's Marks before filing applications for Opposer's Marks.

Admission Request No. 8

Admit that the identification of services in the applications for Applicant's Marks contains no restrictions as to the type of purchaser of the services.

Admission Request No. 9

Admit that the identification of services in the applications for Applicant's Marks contains no trade-channel restrictions.

Admission Request No. 10

Admit that the identification of services in the applications for Applicant's Marks contains no method-of-sale restrictions.

Admission Request No. 11

Admit that Applicant has provided and intends to provide on-line auctions featuring musical instruments services under Applicant's Mark.

Admission Request No. 12

Admit that Opposer has provided and intends to provide on-line auctions featuring musical instruments services under Opposer's Mark.

Admission Request No. 13

Admit that the services which Applicant has provided and intends to provide under Applicant's Mark are similar or identical to the services which Opposer provides

under Opposer's Mark.

Admission Request No. 14

Admit that Applicant markets its services under Applicant's Mark to the same consumers to which Opposer markets its services under Opposer's Mark.

Admission Request No. 15

Admit that Applicant has provided and intends to provide its services under Applicant's Marks to some of the same types or classes of purchasers as Opposer is providing its services under Opposer's Marks.

Admission Request No. 16

Admit that Applicant's Mark was not used in trade or commerce in the United States prior to 2012.

Admission Request No. 17

Admit that Applicant's Mark is designed to connote and build upon the history, goodwill, and business reputation of Opposer.

Admission Request No. 18

Admit that the dominant feature of Applicant's Mark is the term "COZIO."

Admission Request No. 19

Admit that a dominant feature of Applicant's Mark is the term "COZIO."

Admission Request No. 20

Admit that a prominent feature of Applicant's Mark is the term "COZIO."

Admission Request No. 21

Admit that the dominant feature of Opposer's Mark is the term "COZIO."

Admission Request No. 22

Admit that Opposer's COZIO is famous and holds significant value and goodwill in the United States.

Admission Request No. 23

Opposer has been using the COZIO mark in commerce to provide on-line services featuring musical instruments since at least as early as 2003.

Admission Request No. 24:

Admit that Applicant has not sold, distributed, advertised, marketed, or displayed services bearing the Applicant's Mark.

Admission Request No. 25:

Admit that Applicant has sold, distributed, advertised, marketed, or displayed services bearing the mark CONTE COZIO MUSICAL INSTRUMENT AUCTIONS.

Admission Request No. 26

Admit that Applicant has evidence that any third party actually believed Applicant's services were associated with, sponsored by, or in any manner connected with Opposer or any of Opposer's services.

Admission Request No. 27

Admit that there is a likelihood of confusion between Applicant's Mark and Opposer's Mark.

Admission Request No. 28

Admit that Opposer used Opposer's Mark in commerce long before Applicant commenced use in commerce of Applicant's Mark.

Admission Request No. 29

Admit that Opposer used Opposer's Mark in commerce prior to September 13, 2012.

Dated: New York, New York
January 24, 2014

Respectfully submitted,

GORDON, HERLANDS,
RANDOLPH & COX LLP

By 

Peter J. Vranum, Esq.
355 Lexington Avenue
New York, New York 10017
(212) 986-1200

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposer's First Request for Admissions Nos. 1-29 was served on Applicant on January 24, 2014, by mailing a copy first class mail, postage prepaid, in a sealed envelope addressed to:

Conte Cozio Auctions, LLC.
2016 Wallace Street, Suite 1R
Philadelphia, PA 19130

And by sending a copy by email to: "info@contecozio.com"



Peter J. Vranum

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X		
TARISIO AUCTIONS LLC,)	
)	Opposition No. 91211879
Opposer,)	
)	Appl. Serial No. 85756067
v.)	
)	
CONTE COZIO AUCTIONS,)	
LLC DBA CONTE COZIO,)	
)	
Applicant.)	
-----X		

OPPOSER'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, Tarisio Auctions, LLC ("Opposer") requests that Applicant Conte Cozio Auctions, LLC dba Conte Cozio ("Applicant") answer each of the following interrogatories, under oath and within 30 days of service, in accordance with the following definitions and instructions.

DEFINITIONS

1. The terms "You," "Your," and "Applicant" mean Conte Cozio Auctions, LLC dba Conte Cozio, its present and former divisions, subsidiaries and related entities, and all present and former partners, employees, officers, directors, agents, representatives, attorneys, or any other persons acting at its direction, under its control or on its behalf.

2. The term "Applicant's Mark" means the Applicant's trademark that is the subject of this opposition proceeding, namely, application Serial No. 85756067.

3. The term "Opposer's Mark" means Opposer's trademark cited in the Opposer's Notice of Opposition for the mark COZIO and as shown in U.S. Trademark Application Serial No. 85790001.

4. The terms "Trademark" and "Mark" mean federally registered and state registered trademarks, service marks and trade names; unregistered trademarks, service marks and trade names; and trademarks, service marks and trade names at common law in any jurisdiction.

5. The term "Document" is used in the broadest sense of Rule 34 of the Federal Rules of Civil Procedure and encompasses all manner of recordation such as hard copy, carbon copy, photocopy, microfilm, microfiche and machine readable code and includes without limitation, letters, copies of letters, intra-corporate communications, minutes, bulletins, specifications, instructions, advertisements, literature, trademark registrations, work assignments, reports, memoranda, memoranda of conversations, notes, notebooks, drafts, data sheets, work sheets, contracts, memoranda of agreements, assignments, licenses, sublicenses, books of accounts, orders, invoices, statements, bills, vouchers, photographs, drawings, charts, catalogues, brochures, and other written materials of whatever kind known to You or in Your possession or control.

6. The term "Communication" refers to every manner or means of disclosure or transfer or exchange of information whether orally or by document and whether face to face, by telephone, facsimile transmission, mail, personal delivery, electronic mail, computer transmission, or otherwise.

7. The term "Relating To" means referring to, pertaining to, consisting of, constituting, memorializing, confirming, containing or otherwise connected to.

8. The term "Person" refers to individuals, parties, associations, partnerships, firms, corporations, and other business organizations or entities whether formal or informal.

9. Unless otherwise indicated by the context, the term "Identify" means:

a. when used in connection with a Document, to furnish a brief description of the subject matter of the Document, its title or designation, its date of preparation and distribution, the name and address of the author and sender, the name and address of the Person, if any, to whom it was directed or to whom copies or similar Documents were directed, the location thereof; and the present custodian;

b. when used in connection with a Person, to furnish a statement of the full name, occupation, job title, business or function thereof, last known business and home address and telephone number, place and date of incorporation, principal and other place(s) of business, nature of business, all officers and other Persons having knowledge of the matter with respect to the business entity, executive offices of the company, its relation to You or to Your goods or products or other things;

c. when used in connection with things, including and not limited to products, devices, goods or physical things, to furnish a complete description of the thing, including its common designation, its composition, its physical description, product type, any other distinguishing characteristics; the catalog, SKU, stock or other identifying number; and the trademark, name, type, grade, and any other designation

customarily used to designate the item and to distinguish it from others made or sold by the same or a different producer or vendor;

d. when used in connection with a Mark, Trademark, Trademark application, or Trademark registration, to identify its country or state registration number and application number; identify its date of first use in that country or state and the goods on which used, identify the "Person" owning the trademark, identify the United States counterpart application or registration (if any); and give the date of first use in commerce in the United States and identify the goods on which used.

10. The words "and," "and/or," and "or" refer to both the conjunctive and disjunctive meaning. The word "any" shall mean "each and every" as well as "anyone."

INSTRUCTIONS

1. These interrogatories seek responses that are accurate as of the date they are given, and are continuing so that any additional information responsive to these interrogatories that You learn at any time shall be timely furnished to Opposer in supplemental responses.

2. In responding to these interrogatories, please furnish all information known or available to You, including information in the possession of Your attorneys, other Persons directly or indirectly employed or retained by You, including but not limited to, Your agents, officers, employees, representatives, investigators or anyone else acting or purporting to act on Your behalf or under Your control.

3. If any interrogatory cannot be responded to in full, respond to the extent possible, specify the reasons for the inability to respond to the remainder and state

whatever information, knowledge or belief You have concerning the unanswered portion.

4. If a claim of privilege is made, You are requested to specify the grounds on which such claim is based and to identify the information subject to the claimed privilege.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify any Person furnishing information for Your responses to these interrogatories, designating the number of the interrogatory for which that Person furnished information.

INTERROGATORY NO. 2:

Identify Conte Cozio Auctions, LLC dba Conte Cozio, including any entities or associations (whether incorporated or unincorporated) under or through which Applicant does business.

INTERROGATORY NO. 3:

Identify any Person who was, is, or will be, in charge of or responsible for the manufacture, production, advertising, sale and/or marketing of retail services under or goods bearing or sold in connection with the Applicant's Mark.

INTERROGATORY NO. 4:

For each Person Identified in Your response to Interrogatory No. 3, describe the extent of his or her responsibilities with regard to the manufacture, production, advertising, sale, and/or marketing of retail services under or goods bearing or sold in connection with the Applicant's Mark.

INTERROGATORY NO. 5:

Identify any states in which You have engaged in retail services with respect to, or sold, distributed, advertised, marketed, or displayed goods bearing or sold in connection with the Applicant's Mark.

INTERROGATORY NO. 6:

For each state Identified in Your response to Interrogatory No. 5, state the period of time over which You have engaged in retail services with respect to, or sold, distributed, advertised, marketed, or displayed goods bearing or sold in connection with the Applicant's Mark.

INTERROGATORY NO. 7:

Identify any consumer surveys or other surveys (including survey questionnaires and reports) conducted by You or on Your behalf with respect to the term "COZIO" or for marks containing the term COZIO.

INTERROGATORY NO. 8:

Identify any Person who has knowledge of any facts stated in Your response to Interrogatory No. 7.

INTERROGATORY NO. 9:

Identify any Person who has rendered services to You or on Your behalf in connection with the advertising or promotion, or planned advertising or promotion, of retail services or goods bearing or sold in connection with the Applicant's Mark.

INTERROGATORY NO. 10:

For each Person Identified in Your response to Interrogatory No. 9, describe the type of services rendered, costs associated with such services, and the dates such, services were or will be tendered.

INTERROGATORY NO. 11:

Identify any product or services in conjunction with which You have used or plan to use the Applicant's Mark, including the dates of use of the Applicant's Mark on each such product or in connection with such service.

INTERROGATORY NO. 12:

For each product or service Identified in Your response to Interrogatory No. 11, Identify all retailers, online retailers, wholesalers and/or distributors that sell or have ever sold the product or provided the service in the United States.

INTERROGATORY NO. 13:

For each product or service Identified in Your response to Interrogatory No. 11, describe the past, current and anticipated geographic areas of distribution of the product or service.

INTERROGATORY NO 14:

For each product or service Identified in Your response to Interrogatory No. 11, state the date that the product or service was first sold or provided in the United States.

INTERROGATORY NO. 15:

For each product or service Identified in Your response to Interrogatory No. 11, state the quantity of the product sold per calendar or fiscal year, from the date of Your first sale to the present, in the United States.

INTERROGATORY NO. 16:

For each product or service Identified in Your response to Interrogatory No. 11, state the total dollar amount of sales of the product or the total dollar amount of services per calendar or fiscal year, from the date of Your first sale to the present, in the United States.

INTERROGATORY NO. 17:

Describe any advertisement or promotion, or planned advertisement or promotion, including without limitation in print, on the Internet, television or other media, for any of the products or services Identified in Your response to Interrogatory No. 11, including the media outlet, the inclusive dates that the advertisement or promotion ran or will run, the geographical distribution of the advertisement or promotion, and the total dollar amount per year that You spent or anticipate spending for such advertisement or promotion.

INTERROGATORY NO. 18:

Identify any Person who participated in the design, creation, selection, adoption, and/or approval of the Applicant's Mark.

INTERROGATORY NO. 19:

Describe the circumstances under which You first became aware of the Opposer's Mark.

INTERROGATORY NO. 20:

Identify any Person with knowledge of any facts stated in Your response to Interrogatory No. 19.

INTERROGATORY NO. 21:

Identify any Communications Relating To any inquiries about whether Opposer's goods and/or services are manufactured by, associated with, sponsored by, or in any manner connected with Applicant or any of Applicant's products or services.

INTERROGATORY NO. 22:

Identify any Person with knowledge of any facts stated in Your response to Interrogatory No. 21.

INTERROGATORY NO. 23:

Identify any Communications with any Person other than Opposer in which it was asserted that there was confusion or a likelihood of confusion of retail services or products bearing or sold in conjunction with the Applicant's Mark with clothing and/or retail services or products bearing or sold in conjunction with any Trademark, including without limitation the Opposer's Mark.

INTERROGATORY NO. 24:

State all facts that support Your allegations in Your Answer to Notice of Opposition.

INTERROGATORY NO. 25:

Identify any Person with knowledge of any facts stated in Your response to Interrogatory No. 24.

INTERROGATORY NO. 26:

State the quantity of goods or services You have sold in the United States per month from the date of first sale to the present that bear or are sold in conjunction with the Applicant's Mark.

INTERROGATORY NO. 27:

State the total dollar amount of Your sales of goods or services in the United States per month from the date of first sale to the present that bear or are sold in conjunction with the Applicant's Mark.

INTERROGATORY NO. 28:

State all facts that support Your allegation in the Answer to Notice of Opposition that "The Notice of Opposition fails to state a claim upon which relief may be granted."

INTERROGATORY NO. 29:

State all facts that support Your allegation in the Answer to Notice of Opposition that "Opposer's claims in the Notice of Opposition are barred under the doctrine of estoppel."

INTERROGATORY NO. 30:

State all facts that support Your allegation in the Answer to Notice of Opposition that "Opposer's claims in the Notice of Opposition are barred under the doctrine of waiver."

INTERROGATORY NO. 31:

State all facts that support Your allegation in the Answer to Notice of Opposition that: "Opposer's claims in the Notice of Opposition are barred under the doctrine of laches."

INTERROGATORY NO. 32:

State all facts that support Your allegation in the Answer to Notice of Opposition that: "There is no likelihood of confusion between Applicant's mark and Opposer's marks."

INTERROGATORY NO. 33:

State all facts that support Your allegation in the Answer to Notice of Opposition that: "There is no likelihood of confusion, mistake or deception because Applicant's trademark and the alleged trademark of Opposer are not confusingly similar."

Dated: New York, New York
March 31, 2014

GORDON, HERLANDS,
RANDOLPH & COX LLP

By: Peter J. Vranum
Peter J. Vranum, Esq.
Attorneys for Opposer
355 Lexington Avenue
New York, New York 10017
(212) 986-1200

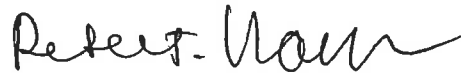
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposer's First Set of Interrogatories was served upon Applicant by first class mail by depositing a true copy thereof in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to:

Conte Cozio Auctions LLC
2016 Wallace Street, Suite 1R
Philadelphia, PA 19130-3254

And by sending a copy by email to: "info@contecozio.com"

this 31th day of March, 2014.



Peter J. Vranum

EXHIBIT C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X		
TARISIO AUCTIONS LLC,)	
)	Opposition No. 91211879
Opposer,)	
)	Appl. Serial No. 85756067
v.)	
)	
CONTE COZIO AUCTIONS,)	
LLC DBA CONTE COZIO,)	
)	
Applicant.)	
-----X		

OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS DIRECTED TO APPLICANT

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Tarisio Auctions, LLC ("Opposer") requests that Applicant Conte Cozio Auctions, LLC dba Conte Cozio ("Applicant") produce the following documents and things for discovery, inspection and copying at the offices of Gordon, Herlands, Randolph & Cox LLP, 355 Lexington Avenue, New York, New York 10017, within 30 days of the date of service in accordance with the following definitions and instructions.

DEFINITIONS

1. The terms "You," "Your," and "Applicant" mean Conte Cozio Auctions, LLC dba Conte Cozio, its present and former divisions, subsidiaries and related entities,

and all present and former partners, employees, officers, directors, agents, representatives, attorneys, or any other persons acting at its direction, under its control or on its behalf.

2. The term "Applicant's Mark" means Applicant's trademark that is the subject of this proceeding, namely, application Serial No. 85756067.

3. The term "Opposer's Mark" means the mark cited in the Opposer's Notice of Opposition for the mark COZIO and as shown in U.S. Trademark Application Serial No. 85790001.

4. The terms "Trademark" and "Mark" mean federally registered and state registered trademarks, service marks and trade names; unregistered trademarks, service marks and trade names; and trademarks, service marks and trade names at common law in any jurisdiction.

5. The term "Document" is used in the broadest sense of Rule 34 of the Federal Rules of Civil Procedure and encompasses all manner of recordation such as hard copy, carbon copy, photocopy, microfilm, microfiche and machine readable code and includes without limitation, letters, copies of letters, intra-corporate communications, minutes, bulletins, specifications, instructions, advertisements, literature, trademark registrations, work assignments, reports, memoranda, memoranda of conversations, notes, notebooks, drafts, data sheets, work sheets, contracts, memoranda of agreements, assignments, licenses, sublicenses, books of accounts, orders, invoices, statements, bills, vouchers, photographs, drawings, charts, catalogues, brochures, and other written materials of whatever kind known to You or in Your possession or control.

6. The term "Communication" refers to every manner or means of disclosure or transfer or exchange of information whether orally or by Document and whether face to face, by telephone, facsimile transmission, mail, personal delivery, electronic mail, computer transmission, or otherwise.

7. The term "Relating To" means referring to, pertaining to, consisting of, constituting, memorializing, confirming, containing or otherwise connected to.

8. The term "Person" refers to individuals, parties, associations, partnerships, firms, corporations, and other business organizations or entities whether formal or informal.

9. The words "and," "and/or," and "or" refer to both the conjunctive and disjunctive meaning.

10. The word "any" shall mean "each and every" as well as "anyone."

INSTRUCTIONS

1. These requests seek responses that are accurate as of the date they are given and are continuing so that any additional information responsive to these requests that You learn at any time shall timely be furnished to Opposer in supplemental responses.

2. In responding to these requests, please furnish all Documents, Communications and things known or available to You, including those in the possession of Your attorneys or other Persons directly or indirectly employed or retained by You, including but not limited to Your agents, officers, employees,

representatives, investigators or anyone else acting or purporting to act on Your behalf or under Your control.

3. To the extent that You withhold any Document or Communication in whole or in part because of a claim of privilege or immunity, please provide a privilege log setting forth the general nature of each Document, Communication, or portion thereof withheld, its subject matter, and any other information necessary to explain Your claim of privilege or immunity and to allow a court to adjudicate the propriety of such claim.

4. If You cannot respond to any request in full, please respond to the fullest extent possible, explain why You cannot respond to the remainder, and describe the nature of the Documents or Communications or things You cannot provide.

5. If You object to any portion of a request, please respond to all portions of the request to which You do not object.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All Documents referenced in response to Opposer's First Set of Interrogatories.

REQUEST FOR PRODUCTION NO. 2:

All Documents Relating To the development, creation, adoption, and/or use of the Applicant's Mark, including but not limited to correspondence, design specifications, photographs, labels, internal memoranda, sources of inspiration and drawings.

REQUEST FOR PRODUCTION NO. 3:

All Documents Relating to any discussion, consideration or trademark search or consumer survey or other survey (including survey questionnaires and reports) by You or any Person on Your behalf regarding whether the Applicant's Mark infringes, dilutes or is similar to any Trademark.

REQUEST FOR PRODUCTION NO. 4:

All Documents Relating to any discussion, consideration or trademark search or consumer survey or other survey (including survey questionnaires and reports) by You or any Person on Your behalf regarding whether the Applicant's Mark infringes, dilutes or is similar to the Opposer's Mark.

REQUEST FOR PRODUCTION NO. 5:

All Documents Relating To any discussion, consideration or trademark search by You or any Person on Your behalf regarding whether the Applicant's Mark should be registered as a Trademark.

REQUEST FOR PRODUCTION NO. 6:

All Documents Relating To any trademark registration or application for the Applicant's Mark that You own or have filed in any jurisdiction, including but not limited to United States application Serial No. 85756067.

REQUEST FOR PRODUCTION NO. 7:

All Documents Relating To any attempt by You to enforce any trademark right You claim in the Applicant's Mark, including but not limited to Documents Related To any litigation, opposition proceedings, and/or cease and desist matters.

REQUEST FOR PRODUCTION NO. 8:

All Documents Relating To any attempt by You to enforce any trademark right You claim in the term "COZIO" alone without the term "CONTE," including but not limited to Documents Related To any litigation, opposition proceedings, and/or cease and desist letters.

REQUEST FOR PRODUCTION NO. 9:

All Documents Relating To any instance in which a party other than Opposer has attempted to enforce any trademark rights against You, including without limitation Documents Relating To any litigation, opposition proceedings, and/or cease and desist matters.

REQUEST FOR PRODUCTION NO. 10:

All Documents Relating To any sales by You of services or products bearing or sold in conjunction with the Applicant's Mark, including but not limited to Documents indicating the dates of such sales, the customer, and the quantity and/or type of goods sold.

REQUEST FOR PRODUCTION NO. 11:

All Documents Relating To any agreement You have with any Person to distribute or sell Your services or products, including but not limited to any agreement to sell Your services or products over the Internet.

REQUEST FOR PRODUCTION NO. 12:

All Documents Relating To any marketing or promotional effort or advertising or sales campaign conducted or contemplated by You or on Your behalf that depicts, depicted or is intended to depict any service or product bearing or sold in conjunction with the Applicant's Mark, including but not limited to web pages, advertisements, advertising copy, promotional materials, ad slicks, point of sale materials, web pages, videos, digital footage, tapes, posters, catalogs, price lists, and order sheets.

REQUEST FOR PRODUCTION NO. 13:

All Documents Relating To any marketing or promotional effort or advertising or sales campaign conducted or contemplated by You or on Your behalf that depicts, depicted or is intended to depict any service or product bearing or sold in conjunction with the term "COZIO," alone without the term CONTE, including but not limited to web pages, advertisements, advertising copy, promotional materials, ad slicks, point of sale materials, web pages, videos, digital footage, tapes, posters, catalogs, price lists, and order sheets.

REQUEST FOR PRODUCTION NO. 14:

All Documents sufficient to show the nature, dates appearing, and the identity of the media outlet in which any marketing or promotional effort or advertising or sales

campaign referenced in Your response to the preceding request for production appeared.

REQUEST FOR PRODUCTION NO. 15:

All Documents Relating To Your costs associated with advertising retail services under the Applicant's Mark.

REQUEST FOR PRODUCTION NO. 16:

All Documents Relating To Your costs associated with advertising retail services under the term "COZIO," alone without the term "CONTE."

REQUEST FOR PRODUCTION NO. 17:

All Documents sufficient to identify Your sales volume, whether expressed in dollars or units, of each service or product bearing or sold in conjunction with the Applicant's Mark.

REQUEST FOR PRODUCTION NO. 18:

All Documents Relating To any marketing or sales strategies or plans created, considered, used, or intended to be used by You at any time Relating To any service or product bearing or sold in conjunction with the Applicant's Mark.

REQUEST FOR PRODUCTION NO. 19:

All Documents Relating To the Applicant's Mark, including but not limited to correspondence, emails, publications, articles, memoranda, or surveys.

REQUEST FOR PRODUCTION NO. 20:

All Documents Relating To any Communication between You and any Person other than Opposer, including but not limited to any manufacturer, distributor, retailer, consumer, customer, employee, or competitor, Relating To the Applicant's Mark.

REQUEST FOR PRODUCTION NO. 21:

All Documents Relating To Opposer, including but not limited to correspondence, emails, publications, articles, memoranda, and surveys.

REQUEST FOR PRODUCTION NO. 22:

All Documents Relating To any Communication between You and any Person other than Opposer, including but not limited to any manufacturer, distributor, retailer, consumer, customer, employee, or competitor, Relating To Opposer.

REQUEST FOR PRODUCTION NO. 23:

All Documents Relating To any Communication between You and any representative of Opposer.

REQUEST FOR PRODUCTION NO. 24:

All Documents Relating To any surveys or market research performed by You or on Your behalf in connection with the Applicant's Mark.

REQUEST FOR PRODUCTION NO. 25:

All Documents Relating To the identification by any consumer of the term "CONTE COZIO" with You.

REQUEST FOR PRODUCTION NO. 26:

All Documents or things sufficient to show, for the goods provided by You in conjunction with the Applicant's Mark, the manner of use of the Applicant's Mark in connection with such goods.

REQUEST FOR PRODUCTION NO. 27:

All Documents Relating To any decision by You concerning the appearance (e.g., color, size, configuration, placement, method of application, and style) of the

Applicant's Mark and/or its location or intended location on any of Your products, or in connection with retail services, including but not limited to correspondence, emails, memoranda, marketing materials, and survey materials.

REQUEST FOR PRODUCTION NO. 28:

All Documents Relating To any secondary meaning You have in the Applicant's Mark.

REQUEST FOR PRODUCTION NO. 29:

All Documents Relating To any studies, surveys or analyses reflecting consumer awareness of, recognition of, or reaction to the Applicant's Mark.

REQUEST FOR PRODUCTION NO. 30:

All Documents Relating To any studies, surveys or analyses reflecting consumer awareness of, recognition of, or reaction to the term "COZIO " as emanating from or being owned by Applicant.

REQUEST FOR PRODUCTION NO. 31:

All Documents Relating To any confusion or likelihood of confusion of products bearing the Applicant's Mark with products bearing the Opposer's Mark.

REQUEST FOR PRODUCTION NO. 32:

All Documents Relating To any confusion or likelihood of confusion of the goods of the Opposer with the goods and/or services of Applicant.

REQUEST FOR PRODUCTION NO. 33:

A sample of each different advertisement showing use by Applicant of the Applicant's Mark in connection with goods or services.

REQUEST FOR PRODUCTION NO. 34:

A representative sample of each label, tag, sticker, container, package, point of sale display and brochure ever used, sold, or considered for use or sale by You bearing or depicting the Applicant's Mark.

REQUEST FOR PRODUCTION NO. 35:

All Documents that You contend support the allegations in Your Answer to Notice of Opposition.

REQUEST FOR PRODUCTION NO. 36:

All Documents Relating To any sales by You of services or products bearing or sold in conjunction with the term "COZIO" without the term "CONTE," including but not limited to Documents indicating the dates of such sales, the customer, and the quantity and/or type of goods sold.

REQUEST FOR PRODUCTION NO. 37:

All Documents that You contend support the statements in Your Answer to Notice of Opposition that "The Notice of Opposition fails to state a claim upon which relief may be granted."

REQUEST FOR PRODUCTION NO. 38:

All Documents that You contend support the statements in Your Answer to Notice of Opposition that "Opposer's claims in the Notice of Opposition are barred under the doctrine of estoppel."

REQUEST FOR PRODUCTION NO. 39:

All Documents that You contend support the statements in Your Answer to Notice of Opposition that "Opposer's claims in the Notice of Opposition are barred under the doctrine of waiver."

REQUEST FOR PRODUCTION NO. 40:

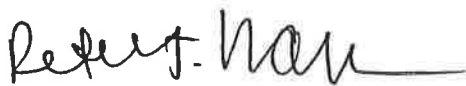
All Documents that You contend support the statements in Your Answer to Notice of Opposition that "Opposer's claims in the Notice of Opposition are barred under the doctrine of laches."

REQUEST FOR PRODUCTION NO. 41:

All Documents that You contend support the statements in Your Answer to Notice of Opposition that "There is no likelihood of confusion between Applicant's mark and Opposer's marks."

Dated: New York, New York
March 31, 2014

Respectfully submitted,
GORDON, HERLANDS,
RANDOLPH & COX, LLP

By 

Peter J. Vranum, Esq.
355 Lexington Avenue
New York, New York 10017
(212) 986-1200

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposer's First Set of Requests for Production of Documents and Things Directed to Applicant was served upon Applicant by first class mail by depositing a true copy thereof in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to:

Conte Cozio Auctions LLC
2016 Wallace Street, Suite 1R
Philadelphia, PA 19130-3254

And by sending a copy by email to: "info@contecozio.com"

this 31th day of March, 2014.

A handwritten signature in black ink, appearing to read "Peter J. Vranum", written over a horizontal line.

Peter J. Vranum